

**Letter of Findings Number: 02-20120442**  
**Income Tax**  
**For Tax Year 2009**

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**ISSUE**

**I. Tax Administration—Late Payment Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent late payment penalty.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state corporation with operations in Indiana. As the result of a federal income tax regulation change, Taxpayer filed an amended return for the tax year 2009, reflecting that Taxpayer had additional Indiana income tax for the tax year 2009. The Department sent a notice that Taxpayer owed a ten percent late payment penalty for 2009. Taxpayer protested the imposition of the penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

**I. Tax Administration—Late Payment Penalty.**

**DISCUSSION**

The Department issued proposed assessments for a ten percent late payment penalty for the tax year 2009. Taxpayer protests the imposition of penalty.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant parts:

...

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10 [percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

....

Next, the Department refers to [45 IAC 15-11-2](#)(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Also, [45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or

failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer filed an amended return for 2009 which resulted in additional Indiana adjusted gross income tax for that year. The Department determined that there was no federal RAR adjustment to account for this change in reported Indiana income and that Taxpayer was subject to a penalty under IC § 6-8.1-10-2.1(b). Taxpayer has affirmatively established that its *[sic]* the amended return was not filed pursuant to a federal RAR adjustment and that both its original and amended filing and remittance of tax payments were due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2](#)(c). Therefore, the penalty will be waived.

**FINDING**

Taxpayer's protest is sustained.

*Posted: 02/27/2013 by Legislative Services Agency*

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